

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 30, 2015**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP136**

**Cir. Ct. No. 2012CV452**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

---

**JOHN HYINK AND HYINK WELL DRILLING, INC.,**

**PLAINTIFFS-APPELLANTS,**

**V.**

**JOHN WOLF AND WOLF JOINT REVOCABLE TRUST,**

**DEFENDANTS-RESPONDENTS,**

**MICHAEL J. ROTH,**

**RECEIVER.**

---

APPEAL from a judgment and an order of the circuit court for Sheboygan County: ANGELA W. SUTKIEWICZ, Judge. *Affirmed in part; reversed in part.*

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

¶1 PER CURIAM. John Hyink and Hyink Well Drilling, Inc., (collectively, Hyink)<sup>1</sup> and John Wolf and Wolf Joint Revocable Trust (Wolf) entered into a postmediation agreement to settle a business dispute. Hyink appeals the judgment and order entered on the circuit court’s ruling on the parties’ cross-motions for enforcement of settlement. We affirm to the extent that the court orally ruled that the agreement required Hyink to provide Wolf a Real Estate Security Agreement (RESA). We reverse to the extent that it ruled that the “spirit” of the settlement agreement required HWD to assume credit card debt not addressed at mediation.

¶2 JH was two-thirds owner of HWD, a closely held family business. His sister, Linda, married to Wolf, owned one-third. Wolf was the corporation’s vice president and treasurer. The brothers-in-law also had a real estate partnership. The real estate investments consisted of the Alpine Road property, used for their well-drilling business, fish operation, and pheasant business; the Highway U property, used for their rental of a mobile home, a two-family home, and cropland; and the Bonita Springs property, a condominium unit in Florida.

¶3 JH came to believe that Wolf had embezzled nearly a million dollars from HWD and, in February 2012, fired him. Hyink filed suit against Wolf, alleging conversion, theft, and breach of fiduciary duty. Wolf counterclaimed for back wages, loans, back rent for real property and equipment, wrongful exclusion from partnership property, and contribution towards a loan deficiency on the

---

<sup>1</sup> Where necessary to distinguish, we will use “JH” for John Hyink and “HWD” for Hyink Well Drilling.

Bonita Springs property, which had gone into foreclosure, and sought judicial dissolution and winding up of the partnership.

¶4 In February 2014, the parties' mediation resulted in an agreement reciting ten paragraphs that "fully and completely resolved the dispute." An eleventh paragraph provided that the settlement terms "shall be set forth in a fuller, complete, written, settlement agreement." The final paragraph reiterated that the agreement represented "a full, final, and mutual settlement ... concerning all issues giving rise to this dispute" and contained a mutual release of all claims arising out of the underlying facts.

¶5 Hyink sent Wolf a draft settlement agreement. Wolf refused to execute it on grounds that Hyink was liable for approximately \$35,000 in allegedly corporate credit card debt that had been "overlooked in the actual mediation agreement." Hyink maintained it was personal debt but, even if corporate, it could not now be added because of the finality of the agreement. Hyink moved to enforce the settlement.

¶6 Wolf filed a cross-motion seeking a judgment against Hyink for the credit card debt, asserting that as the agreement "did not thoroughly address all possible aspects of the settlement," paragraph 11 anticipated a future "fuller, complete" settlement agreement. At a hearing on the motion, the circuit court agreed that the "spirit" of the agreement obligated Hyink to pay corporate debts.

¶7 A second hearing was held to determine whether the debts were personal or corporate. Wolf testified that the four credit cards at issue were issued in the corporate name and/or in his and JH's name and that the balances all represented business debts. JH testified that he was unaware of three of the four cards, had never seen a statement, and could find no records at HWD's office. To

substantiate his claim, Wolf offered redacted portions of his own bank statements and other documents, all downloaded and printed from his computer, but produced no actual credit card statements establishing the charges, the balances, or the name on the individual accounts. The court admitted the incomplete online documents over objection, ruled that the outstanding card balances were corporate debts, and ordered Hyink to reimburse Wolf for the \$15,581.56 he already had paid on the debt. Hyink appeals.

¶8 In the circuit court the parties sparred over Wolf’s authority to use the cards, whether the debt was unauthorized personal or legitimate business expense, and the authenticity of his proof of the amount owing. As we see it, the issue requires only that we determine whether the debts can be made Hyink’s obligation under the terms of the postmediation settlement agreement.

¶9 The interpretation of a written agreement is a question of law. *Schmitz v. Grudzinski*, 141 Wis. 2d 867, 871, 416 N.W.2d 639 (Ct. App. 1987). Whether a contract is ambiguous also is a question of law. *Kernz v. J. L. French Corp.*, 2003 WI App 140, ¶8, 266 Wis. 2d 124, 667 N.W.2d 751. We review questions of law de novo. *Id.* “When the terms of a contract are plain and unambiguous, we will construe the contract as it stands,” because we presume their intent is evidenced by the words they chose. *Id.*, ¶9 (citation omitted).

¶10 The final paragraph of the parties’ agreement provides:

The above promises are made in exchange for a full, final, and mutual settlement between the parties concerning all issues giving rise to this dispute. Each party releases the other from any and all claims and liability arising out of the underlying facts, whether known or unknown, starting from the beginning of time and continuing [through] the signature of the parties’ settlement agreements.

Hyink argues that it could not be clearer that the parties agreed to forgo “any and all claims ... whether known or unknown” for additional monies. Wolf counters that paragraph 11, which anticipates a “fuller, complete, written, settlement agreement,” was inserted precisely because the agreement did not thoroughly address all possible aspects of the settlement, such as the issue of responsibility for paying HWD’s credit card debt.

¶11 We agree with Hyink that the release language is clear. While paragraph 11 allows for “a fuller, complete, written, settlement agreement,” the “fuller” agreement is limited to an amplification of “the settlement terms contained herein.” Those terms comprise the agreed-upon conveyances of the Alpine Road and County U properties, Linda Wolf’s HWD stock, interests in partnership equipment, and an HWD vehicle in Wolf’s possession. Regardless if Wolf used the credit cards to legitimately pay business debts which inadvertently were omitted from the negotiations, the release unambiguously extinguishes all claims, known or unknown. To read the plain language otherwise would render the release meaningless. We must avoid such a construction. *See Goebel v. First Fed. S&L Ass’n*, 83 Wis. 2d 668, 680, 266 N.W.2d 352 (1978). The rules of contract construction cannot be used to inject ambiguity to relieve a party from terms that prove to be disadvantageous. *See State v. Windom*, 169 Wis. 2d 341, 349, 485 N.W.2d 832 (Ct. App. 1992).

¶12 Hyink next complains that the circuit court failed to properly interpret and enforce the postmediation agreement language regarding the RESA. The RESA was ordered to secure the debt on the Bonita Springs property, should JW fail to pay his half of any deficiency related to the foreclosure. The RESA portion of the agreement provides in relevant part:

7. The parties agree that the deficiency on the Bonita Springs condo is a partnership obligation. John Hyink agrees that he is responsible for 50% of whatever must be paid on this deficiency. John Hyink further agrees that to secure this obligation, he will give to John Wolf a real estate security agreement. John Wolf agrees that in the event collection proceedings are brought against him, he will notify John Hyink and that no settlement of the deficiency will be made without John Hyink's consent, which consent will not be unreasonably withheld. John Hyink is to be given the opportunity to be involved in negotiating any resolution of this deficiency.

Hyink contends the language is ambiguous regarding what property to encumber, the amount of the lien, when the RESA must be delivered, when it will be terminated, and under what circumstances Wolf can foreclose.

¶13 Hyink did not argue ambiguity below. “The general rule is that issues not presented to the circuit court will not be considered for the first time on appeal.” *State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997). Further, at the second hearing on the cross-motions to enforce settlement, Hyink's counsel represented that the RESA would be “taken care of” as soon as the escrow agreement was in place, and Wolf's counsel responded that “[t]hat part will be done without any help of the Court.” Hyink did not object. Finally, if Hyink believed any uncertainties should have been spelled out, the parties could have done so with a “fuller” agreement under paragraph 11.

*By the Court.*—Judgment and order affirmed in part and reversed in part.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

